

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

STEARNS, CONRAD AND SCHMIDT,  
CONSULTING ENGINEERS, INC., dba SCS  
ENERGY, a Virginia Corporation,

*Plaintiff*

*vs.*

ENVIRONMENTAL SYSTEMS AND  
COMPOSITES, INC., dba ESC  
CORPORATION, a Washington corporation.

*Defendant*

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ENVIREONMENTAL SYSTEMS AND  
COMPOSITES, INC., a Washington  
Corporation dba ENVIRONMENTAL  
SYSTEMS AND COMPOSITES, INC., dba  
ESC CORPORATION, dba ESC CORP,

*Counter-Plaintiff*

*vs.*

STEARNS, CONRAD AND SCHMIDT,  
CONSULTING ENGINEERS, INC., dba SCS  
ENERGY, a Virginia Corporation,

*Counter-Defendant*

No. **2:09-cv-1616 RAJ**

**RESPONSE BY ESC TO SCS  
MOTION TO COMPEL**

**ESC REQUEST FOR TERMS.**

1 Defendant/Counter Plaintiff Environmental Systems and Composites Inc of  
2 Redmond, Washington, ("ESC") submits the following in Response to Plaintiff SCS's  
3 motion to compel.

4 Contrary to SCS claims, ESC has produced all that can be produced. SCS is  
5 unable to identify what more ESC can provide to SCS. Nonetheless SCS wants sanctions.

6 SCS owes ESC money per contract. The SCS lawsuit is frivolous and so is the SCS  
7 motion to compel.

8 Consequently ESC has had to prepare this Response.

9 As a result ESC also moves for terms.

10 1. BACKGROUND

11 SCS has refused for years to pay the money owed to ESC. When ESC persisted in  
12 demanding payment, SCS hired local counsel and brought this action, suddenly claiming  
13 dissatisfaction with ESC's work.

14 ESC and SCS agreed that ESC would arrange to construct and deliver five  
15 fiberglass tanks for a larger project at the University of New Hampshire. The tanks were  
16 constructed per ESC and SCS agreement in Montana and Texas by third party  
17 manufacturers, and transported to New Hampshire from those states by independent  
18 trucking lines. Offloading, handling and installation of the tanks was the sole  
19 responsibility of SCS.

20 When the tanks were delivered to the job site in New Hampshire, the evidence is  
21 that SCS employees dropped and damaged one of the tanks such that it doesn't work.  
22 Now SCS claims that the tank was not constructed properly.

23 All the tanks were installed incorrectly by SCS and tank failures occurred as a  
24 result. When its errors were pointed out to SCS, SCS refused to fix the work. SCS now  
25 blames ESC when ESC demands payment.

26 SCS has not sued or made any claims against any trucking company, the tank  
27 fabricators in Texas or Montana or anyone other than ESC.  
28  
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1 SCS simply doesn't want to pay its bill.

2 An example of how ridiculous this situation has become is when SCS complained  
3 that ESC specifications and drawings had not been signed by a California professional  
4 engineer despite SCS and its lawyers knowing full well that ESC president Lowell  
5 Howard has been a licensed professional engineer Washington, California and other  
6 states. SCS uses that fact as a basis for this suit.

7 In much the same vein SCS now complains that ESC has not produced documents  
8 and evidence when, in fact, ESC has done so, without objection.

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10 In that the Declaration of opposing counsel does not contain the requisite recitals  
11 of 28 U.S.C. § 1746(2) it is inadmissible herein and we object to its consideration by this  
12 court either for evidentiary purposes or as meeting time of filing requirements.

13 Furthermore we ask that the court dismiss the SCS motion to compel in that all  
14 demands for production have been met.

15 We also request that the court award \$620 to ESC incurred in responding to the  
16 SCS motion and because the SCS motion and actions surrounding it constitute  
17 harassment. SCS is causing unnecessary delay. SCS is needlessly increasing the cost of  
18 the case. All in violation of FRCP 11.

19 DATED this 26<sup>th</sup> day of April 2010.

20 

21 JAMES J. SULLIVAN  
22 Attorney for Defendant ESC Corporation  
23 WSBA #12423  
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1 I, James J. Sullivan, certify under penalty of perjury under the laws of the United  
2 State of America that, on April 26, 2010 I caused to be served by ECF the foregoing  
3 document to the Plaintiff by and through its attorneys listed below.

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11 James J. Sullivan